

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
BECKLEY DIVISION**

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**UNITED STATES OF AMERICA**

**v.**

**DONALD L. BLANKENSHIP**

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**Criminal No. 5:14-cr-00244**

**DEFENDANT’S REPLY TO THE MEDIA INTERVENERS’ OPPOSITION  
TO THE MOTION FOR LEAVE TO FILE UNDER SEAL THE MOTION TO  
TRANSFER AND RELATED MATERIALS AND REPLY**

Defendant Donald L. Blankenship moved on February 20, 2015, to file under seal Defense Motion No. 3: Motion to Transfer to Another District for Trial and the supporting memorandum and exhibits. He moved on March 6, 2015, to file under seal his Reply in support of the motion to transfer. On March 26, 2015, long after the seven day period for filing oppositions to those motions, the Media Intervenors (The Wall Street Journal, The Associated Press, The Charleston Gazette, and National Public Radio, Inc.) filed an opposition to the motions to seal.

The motion to transfer and supporting materials demonstrate that Mr. Blankenship must be tried in another district if he is to have a fair and impartial trial. If the motion to transfer is granted, as it should be, there will be no need to keep the filings regarding transfer under seal.

Until the motion to transfer is decided and if that motion is denied, all of Mr. Blankenship’s filings regarding transfer should remain under seal. The filings are a compendium of prejudice. They contain prejudicial pretrial publicity regarding Mr. Blankenship as well as non-public survey data regarding the nature and extent of prejudgment and bias against him. There is a substantial likelihood that public release of the filings will exacerbate the existing

prejudgment and bias against Mr. Blankenship. Mr. Blankenship must be afforded the opportunity to exercise the rights afforded him under Federal Rule of Criminal Procedure 21 and the United States Constitution to seek a fair and impartial trial in another district without suffering the penalty of inflaming and deepening bias and prejudice against him in this district.

Mr. Blankenship's constitutional right to a fair and impartial trial is a compelling interest that heavily outweighs any public interest in obtaining the filings regarding transfer. Unlike the circumstances in *In re The Charlotte Observer*, 882 F.2d 850 (4th Cir. 1989), the filings regarding transfer here contain detailed and prejudicial information about non-public surveys of potential jurors, including survey respondents' extensive and inflammatory prejudicial comments regarding Mr. Blankenship.

The Court should grant the motions to seal.

Dated: April 2, 2015

Respectfully submitted,

/s/ Blair G. Brown

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*Counsel for Donald L. Blankenship*

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing motion has been electronically filed and service has been made by virtue of such electronic filing this 2nd day of April 2015 on:

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/s/ Blair G. Brown

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